

ACTION IO-00

RELEASED IN FULL

INFO	LOG-00	AF-00	AID-00	AMAD-00	CIAE-00	INL-00	DODE-00
	WHA-00	DS-00	EAP-00	EB-00	EUR-00	UTED-00	FRB-00
	TEDE-00	INR-00	LAB-01	L-00	NEA-00	DCP-00	NSAE-00
	ISN-00	NSCE-00	OIC-00	OIG-00	NIMA-00	PA-00	PER-00
	GIWI-00	PRS-00	P-00	SCT-00	ISNE-00	DOHS-00	SP-00
	IRM-00	SS-00	STR-00	TRSE-00	NCTC-00	FMP-00	BBG-00
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STATE FOR IO/RHS, DRL/MLA, L/HRR

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TAGS: PHUM, UNHRC-1

SUBJECT:SR On Human Rights and Counter Terrorism:

Ravil Gumarov and Timur Ishmurov

1. Mission has received a communication from the SR on Human Rights and Counter Terrorism, Martin Scheinin, concerning cases of Ravil Gumarov and Timur Ishmurov. This communication has been sent via e-mail to IO/RHS and is number 42 on the Geneva 2006 Communications Log.

2. Begin text of letter:

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on Human Rights and Counter Terrorism pursuant to Commission on Human Rights resolution 2005/80, General Assembly resolutions 60/158 and 60/251, and extended by Human Rights Council Decision 2006/102.

I would first like to assure you that I am conscious of the fact that States' obligation to protect and promote human rights requires them to take effective measures to combat terrorism. Further, I would like to underline that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law. I view my mandate as Special Rapporteur as a device to support and advise States in protecting and promoting human rights and fundamental freedoms while countering terrorism. In this connection, I would like to draw the attention of your Government to information I have received regarding Ravil Gumarov

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and Timur Ishmuratov, two former detainees at Guantanamo Bay, Cuba. According to information received:

In February 2004, Ravil Gumarov and Timur Ishmuratov, along with five other Russian citizens, were returned from Guantanamo Bay to Russia. After their return, in April 2005, they were arrested in connection with the explosion of a pipeline in Tatarstan in January 2005. While in detention, it is alleged that they were severely mistreated in an effort to force them to confess. Both men confessed to the crime during the investigation, but subsequently withdrew their confessions in court.

In September 2005, a jury unanimously acquitted them and a third defendant, Fanis Shaikhutdinov, of the charges against them. However, the Russian Supreme Court subsequently annulled the verdict -thereby allowing the three men to be tried again for the same crime - and on 5 May 2006, the defendants were convicted of terrorism and illegal possession of weapons or explosives, and were ordered to pay for the property damage. Ravil Gumarov was sentenced to a term of 13 years, and Timur Ishmuratov to 11 years and one month. The third man, Fanis Shaikhutdinov, received 15 years and six months. All three have appealed their convictions to the Russian Supreme Court. While I do not wish to prejudge the accuracy of these allegations, I wish to draw your Excellency's attention to article 3 of the Convention against Torture, which provides that no State party shall expel, return (refouler), or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. Article 7 of the International Covenant on Civil and Political Rights contains a similar but broader obligation as reflected in paragraph 9 of Human Rights Committee General Comment 20 on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is equally relevant, in which the Committee states that State parties "must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement." The United States is a party to both of these treaties.

I would also like to recall that the Human Rights Committee stated in its consideration of periodic reports by the USA in July this year that: "The State party should take all necessary measures to ensure that individuals, including those it detains outside its own territory, are not returned to another country by way of inter alia, their transfer, rendition, extradition, expulsion or refoulement if there are substantial reasons for believing that they would be in danger of being subjected to torture or cruel, inhuman or degrading treatment or punishment. The State party should conduct thorough and independent investigations into the allegations that persons have been sent to third countries where they have undergone torture or cruel, inhuman or degrading treatment or punishment, modify its legislation and policies to ensure that no such situation will recur, and provide appropriate remedy to the victims" (Human Rights Committee, Concluding Observations, CCPR/C/USA/Q/3/CRP.4, paragraph

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16).

It is my responsibility under the mandate provided to me by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the newly established Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts related to the return from Guantanamo Bay to Russia of the two individuals in the above summary of the case accurate?
2. What measures has your Excellency's Government taken to ensure compliance with the above mentioned international norms, notably the non-refoulement obligation if there is a risk of torture or other inhuman, degrading or cruel treatment? Has your Excellency's government carried out an individual assessment of the risks if these individuals were returned to Russia? Were the individuals given a chance to challenge the decision to return them to Russia?

4. Please explain how your Government monitors whether the Russian authorities comply with the prohibition of torture and other inhuman treatment vis-a-vis a returnee. Has your Excellency's government conducted a thorough and independent investigation into the situation of these two individuals upon their return, as recommended by the Human Rights Committee?

5. Does your Excellency's Government intend to provide compensation to these two individuals if there are findings that the allegations above are true?

I remain at your disposal with regard to any questions or requests for any assessment that your Government would wish to seek, in the form of written comments, hearings before parliamentary or other bodies or through a Special Rapporteur's country visit.

I would appreciate a response to the above questions within sixty days. I will study in depth any responses from your Government, and endeavour to follow-up on them, including in the form of consultations and recommendations.

Accept, Excellency, the assurances of my highest consideration.

Martin Scheinin

Special Rapporteur on Human Rights and counter terrorism

His Excellency Mr. Warren W. Tichenor

Ambassador

Permanent Representative of United States

To the United Nations Office at Geneva

11 Route de Pregny

1292 Chambesy

End text of letter.

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